

APPEAL NO. 020793
FILED MAY 2, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 11, 2002. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____; that the claimant had disability as a result of the compensable injury beginning _____, and continuing through November 28, 2001, and beginning December 10, 2001, and continuing through January 13, 2002; and that the employer did not make a bona fide offer of employment (BFOE) to the claimant which would entitle the appellant (carrier) to adjust the post-injury weekly earnings. The carrier appeals on evidentiary sufficiency grounds. The claimant replies, urging affirmance.

DECISION

Affirmed.

The carrier's appeal essentially reiterates the same arguments that were made before the fact finder: that the claimant's evidence was insufficient; that the claimant was not credible; that he faked an injury to get time off for elective surgery; that his off-work activities demonstrated that he did not have disability; and that the employer's offer of light duty met all the regulatory requirements of a BFOE. As noted above, the hearing officer made determinations adverse to the carrier on each of the issues.

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). We will reverse the factual determinations of a hearing officer only if such determinations are so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the credibility of the respective witnesses and the evidence for that of the hearing officer.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **OLD REPUBLIC INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**PRENTICE HALL CORPORATION SYSTEM, INC.
800 BRAZOS
AUSTIN, TEXAS 78701.**

Michael B. McShane
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge